IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL APPEAL No. 639 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANJITSINH PRABHATSINH CHAVDA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SV RAJU for Appellant(s) : 1,
MR ND GOHIL Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI
Date : 13/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and order dated 28.5.1998 passed by the ld. Addl. Sessions Judge, Baroda in Sessions Case No. 271/1997,

convicting the appellant for the offence punishable under sec. 302 of IPC sentencing him to suffer life imprisonment and fine of Rs. 250/-, in default, further S/I for 15 days.

2. Since the learned counsel for the appellant has fairly stated that in view of the oral testimony of three eye witnesses including the wife of the deceased and two sisters-in-law, who were eye witnesses to the incident which took place in the house of deceased and in view of the unassailable finding given by the learned Judge holding that the appellant was involved in the incident, it is not necessary for us to delve at length on the facts and the merits of the conviction, except the question as to what was the offence committed by the appellant and what sentence should be imposed on him for the same.

3. Vide FIR Ex. 19 lodged immediately after the incident which took place on 22.8.1997, Sajjanben aged 35 years wife of the deceased, stated that she

along with her husband, two brothers of her husband and their respective wifes, were all residing as a joint family. The appellant and his son were residing in the house opposite to the house of complainant. Since the appellant hails from the same village from where the mother of the deceased also came, the complainant and her family members were calling the appellant as “Mama” (maternal uncle). The deceased was suffering from TB for the last two years prior to the date of the incident and was in the habit of taking alcohol. Whenever the deceased come home in a drunken condition, the deceased was quarreling with the complainant and other family members and was creating commotion. Thereupon, the appellant residing in the opposite house, would come to the house of the complainant and deceased and would pacify the deceased and succeed in patching up the dispute.

On the date of incident, both the younger brothers of the deceased had gone out for job and therefore, the complainant and her two sisters-in-law

were at home doing house hold chores. At around 12.00noon, the deceased returned home and got annoyed with his sisters-in-law on a trivial issue. Since he was in a drunken condition, he got enraged and started abusing his sisters-in-law. Upon hearing his shouts, the appellant came to the house of the deceased and tried to persuade the deceased to cool down. However, a scuffle ensued and the appellant picked up a wooden plank lying on the water drum and hit it on the head of the deceased. The deceased, therefore, started bleeding from his head. The complainant and her two sisters-in-law intervened but the appellant did not release the deceased. In the meantime, Nilesh (son of the appellant) rushed to the spot and tried to pull the deceased away from the appellant requesting the deceased not to hurl abuses. At that time, the appellant inflicted a knife blow on the right portion of stomach of the deceased. The deceased, thereupon, collapsed. Upon somebody informing the police, the police came in a Van and a few neighbours took the deceased to the Government Hospital for treatment, however, the doctor declared

the deceased as arrived dead. The complainant, therefore, lodged a complaint to the effect that the appellant and his son Nilesh had interfered with the domestic affairs of the deceased and his family without any justification, quarreled with the deceased, abused him and hit the deceased with a wooden plank and caused the death of the deceased by inflicting a deadly weapon like knife into the stomach of the deceased.

4. During the course of evidence led by the prosecution, the complainant and her two sisters-in-law admitted that as per the prosecution case in the FIR itself that the appellant hails from the same village of mother of the deceased. The deceased, his two brothers, complainant and her two sisters-in-law, in short, the family members of the deceased used to call the appellant as “Mama” (maternal uncle)and that on account of the quarrels which the deceased used to raise after getting drunk, the appellant was very often trying to help the women in the house during such times of distress for the complainant and her

two sisters-in-law. It also transpires on appreciation of the prosecution evidence that it was Nilesh (appellant's son) who had brought the knife from the house of the appellant and it was Nilesh who gave it to the appellant when the deceased was having the scuffle with the appellant. In fact, the appellant himself had also filed a complaint against the deceased on the same day vide Ex. 35 indicating that the deceased had scuffle with the appellant and the deceased had caused injuries to the appellant with hard and blunt substance on the left hand of the appellant and the deceased had also caused injuries on the lower part of chest and abdomen with nail scratches. It was also alleged in the said complaint that when the appellant's son Nilesh also tried to intervene, the deceased had also assaulted Nilesh, but fortunately, Nilesh did not sustain any injury.

5. Even without going into the question whether the appellant has proved the contents of the complaint Ex. 35, the fact remains that as per the prosecution case, it was the deceased who had first started

quarrel by abusing the complainant and two sisters-in-law in the house of the deceased and that since the appellant was being treated as a near relative by calling him “Mama” (maternal uncle), the appellant was very often gong to the house of the deceased to pacify the deceased and to help the three ladies, who were being subjected to such indignities by the deceased after getting drunk. In this set of circumstances, it cannot be said that the appellant had ever premeditation to cause the death of the deceased or even to cause any injury which would be sufficient in ordinary course of nature to cause death of a person. Hence, we accept the submission of the learned counsel for the appellant that even as per the prosecution case, there was a sudden fight in the heat of passion and that the appellant had inflicted the injuries without any premeditation. In the facts and circumstances of the case, it can never be said that the appellant had taken undue advantage or acted in a cruel or unusual manner. Hence all the ingredients of Exception-4 to section 300 of IPC are satisfied:

> Exception-4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

6. In view of the above discussion, the case against the appellant has to go out of section 302 of IPC and would fall under sec. 304 of IPC. Even while considering this question, the aforesaid salient facts emerging from the prosecution case itself, cannot be ignored since the appellant had come to the house of the deceased only when the deceased was quarreling and abusing three ladies in the house. The appellant, being considered as an elder member to the family of the deceased, had come to pacify the deceased and, thereafter there was a sudden scuffle and sudden fight in the heat of passion. Hence it cannot be said that the appellant had gone to the house of the deceased with an intention to cause any

injury which would be sufficient in the ordinary course of nature to cause death of a person. At the same time, even though, hitting the deceased with the wooden plank lying on the water drum, was not such a severe blow to cause death of the deceased in the ordinary course of nature, inflicting the knife into the stomach of the deceased was sufficient in the ordinary course of nature to cause death and, therefore, knowledge of intensity of the assault and consequent fatal injury must be attributed to the appellant. Hence, we are satisfied that the case would fall under sec. 304 Part-II of IPC and not under sec. 304 Part-I.

7. We may at this stage state that Nilesh son of the appellant was minor, aged 13 years, at the time of incident and therefore, not arraigned as an accused in the sessions case but he was tried as a juvenile offender. It was Nilesh who had brought the knife to the scene of offence which the appellant used in the heat of passion during the fight which originated only on account of the drunken and

irresponsible behaviour of the deceased and the appellant had only gone to the house of the deceased to pacify the deceased to help out the three women.

In view of the above facts and circumstances of the case, we are of the view that the imprisonment for more than 8 years since 22.8.1997 already undergone by the appellant must be considered as sufficient punishment for the offence punishable under sec. 304 Part-II.

8. Before concluding the discussion, we cannot help observing that the learned Sessions Judges including learned Fast Track Judges do not seem to appreciate that the question whether the case falls under any of the exceptions to Sec. 300 may be considered on the basis of the prosecution evidence itself and even in absence of the accused having led any evidence.

9. In view of the above discussion, we pass the following order:

This appeal is partly allowed. Conviction of the appellant for the offence punishable under sec. 302 of IPC is altered to conviction for the offence punishable under section 304 Part-II of IPC and we impose the sentence of imprisonment as already undergone by the appellant. We also sentence the appellant to pay fine of Rs. 250/-. In view of the statement from the learned counsel for appellant that the appellant had already paid the fine after the order of conviction by the trial court, there is no question of imposing any sentence of default on account of non-payment of fine. The order passed by the learned Sessions Judge regarding muddamal is confirmed.

The appellant shall accordingly be released forthwith, if not otherwise required in any other case. Writ be sent to the concerned jail authority, forthwith.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

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